

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

VERMONT MUTUAL INSURANCE COMPANY, )  
As subrogee of TIMOTHY D. STEIN and )  
And WAYNE ROLF, )  
 )  
Plaintiff, )  
 )  
Vs. )  
 )  
DAVID'S FLOOR SERVICE, INC. and )  
MIN DANG, d/b/a DAVID'S FLOOR SERVICE, ) CIVIL ACTION 05-10307 JLT  
 )  
Defendants/Third Party Plaintiffs )  
 )  
Vs. )  
 )  
MUOI BUI a/k/a MUOI PHAM, )  
As Administratrix of The ESTATE OF )  
TOAN BUI d/b/a BLESS HARDWOODS )  
 )  
Third Party Defendants. )

ANSWER OF THE THIRD PARTY DEFENDANT, MUOI BUI a/k/a MUOI PHAM AS  
ADMINISTRATRIX OF THE ESTATE OF TOAN BUI d/b/a BLESSED HARDWOODS  
TO THE THIRD PARTY COMPLAINT OF DAVID'S FLOOR SERVICE, INC.

FIRST DEFENSE

The third party defendant, Muoi Bui a/k/a Muoi Pham, as Administratrix of the Estate of Toan Bui d/b/a Bless Hardwoods (hereinafter "Muoi Bui"), makes her answers to the allegations contained in the numbered paragraphs of the third party complaint of David's Floor Service, Inc. as follows:

1. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of this allegation, and, therefore, denies the allegation contained herein.
2. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of this allegation, and, therefore, denies the allegation contained herein.
3. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of this allegation, and, therefore, denies the allegation contained herein.

4. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of this allegation, and, therefore, denies the allegation contained herein.
5. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of this allegation, and, therefore, denies the allegation contained herein.
6. Muoi Bui is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in this paragraph, and therefore, denies the remaining allegations contained herein.
7. Muoi Bui admits the allegations contained in this paragraph.
8. Muoi Bui admits that the complaint filed by Vermont Mutual Insurance a/s/o Timothy Stein and Wayne Rolf against David's Floor Service, Inc. and Minh Dang d/b/a David's Floor Service speaks for itself.
9. Muoi Bui denies the allegations contained in this paragraph.

COUNT I

10. Muoi Bui hereby restates and incorporates by reference her responses to paragraphs 1 through 9 as if fully stated herein.
11. Muoi Bui denies the allegations contained in this paragraph.
12. Muoi Bui denies the allegations contained in this paragraph.

COUNT II

13. Muoi Bui hereby restates and incorporates by reference her responses to paragraphs 1 through 12 as if fully stated herein.
14. Muoi Bui denies the allegations contained in this paragraph.
15. Muoi Bui denies the allegations contained in this paragraph.

SECOND DEFENSE

The Third Party Complaint fails to state claims upon which relief can be granted to David's Floor Service.

THIRD DEFENSE

The plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, were not in the exercise of due care at the time set forth in the Complaint and the damages alleged were caused in whole or in part by the negligence of the plaintiff's subrogors, to a degree greater than any alleged negligence of the third party defendant.

FOURTH DEFENSE

The intervening act of a third party was the proximate cause of the alleged injuries and damages suffered by the plaintiff's subrogors, and therefore Muoi Bui bears no responsibility for the damages alleged in the Complaint.

FIFTH DEFENSE

If the plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, were injured as alleged in the Complaint, which is denied, then the plaintiff's subrogors' damages were caused by a third person or persons for whose conduct Muoi Bui was not and is not legally responsible.

SIXTH DEFENSE

If the plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, did sustain damages as alleged in the Complaint, which is denied, the negligence of the plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, contributed to their damages, was greater than any alleged negligence of the third party defendant, Muoi Bui, and thus bars the recovery of any damages in this action.

SEVENTH DEFENSE

If the plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, did sustain damages as alleged in the Complaint, which is denied, the negligence of the plaintiff's subrogors, Timothy D. Stein and Wayne Rolf, contributed to their damages, and therefore any recovery should be reduced by the percentage of negligence attributable to the plaintiff's subrogors.

EIGHTH DEFENSE

The Third Party Plaintiff's Claims are barred by the applicable statute of limitations.

WHEREFORE, having fully answered, the third party defendant, Muoi Bui denies that the defendant/third party plaintiff David's Floor Service, Inc., is entitled to the relief prayed for in its third party complaint or to any other relief and the third party defendant prays that the third party complaint be dismissed, with prejudice, and that the costs thereof be taxed against the defendant/third party plaintiff and this Court grant any such further relief to the third party defendant as it may deem appropriate.

THE THIRD PARTY DEFENDANT/PLAINTIFF-IN-CROSS-CLAIM, MUOI BUI A/K/A MUOI PHAM, AS ADMINSTRATRIX OF THE ESTATE OF TOAN BUI, D/B/A BLESS HARDWOODS CLAIMS A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,  
Third Party Defendant Muoi Bui  
a/k/a Muoi Pham, as Administratrix  
of the Estate of Toan Bui d/b/a  
Bless Hardwoods,  
By her attorneys,

/s/ Timothy M. Roche  
Matthew Mahoney, BBO#  
Timothy M. Roche BBO # 561973  
MONAHAN & ASSOCIATES, P.C.  
113 Union Wharf East  
Boston, MA 02109  
(617) 227-1500

CERTIFICATE OF SERVICE

I, Timothy M. Roche, hereby certify that on the \_\_\_\_ day of January, 2006, I have served the foregoing document on all parties by causing copies of same to be sent via first class mail, postage prepaid, to Susan Johnson Bowen, Esquire, WARREN, HENSLEY & BOWEN, LLP, 185 Devonshire Street, Suite 1000, Boston, Massachusetts 02108, Patrick J. Loftus, Esquire, LAW OFFICES OF PATRICK J. LOFTUS, No. 9 Park Street, Suite 500, Boston, Massachusetts 02108, James P. Cullen, Esquire, COZEN O'CONNOR, 1900 Market Stret, The Atrium-Third Floor, Philadelphia, Pennsylvania 19103.

/s/ Timothy M. Roche  
Timothy M. Roche